

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1478 OF 2005**

Sharda Nathrao Khadtare

...Petitioner

Vs.

The Education Officer & Ors.

...Respondents

Mr.S.G.Kudle for the Petitioner.

Mr.Nitin Jamdar for Respondent No.1.

Mr.C.R.Sonawane, A.G.P.for Respondent No.2.

**CORAM :- B.H.MARLAPALLE &
NARESH H.PATIL,JJ.**

DATE :- 26TH SEPTEMBER,2006

P.C.

1. Heard Mr.Kudle, the learned Counsel for the Petitioner, who is aggrieved by the order dated 11th January, 2005 passed by the Education Officer (Primary), Zilla Parishad, Solapur, thereby declining to grant approval to her appointment as an Assistant Teacher (trained) in the primary section.

2. It is the case of the Petitioner that she came to be appointed for the first time in the academic year 1991-92 and she was continued all along, though she did not possess the requisite training qualifications i.e. D.Ed, S.T.C. or D.T. etc. She joined the Postal D.Ed. Course and passed the D.Ed. examination in March, 2003. Even if she obtained the training qualification, her appointment was not approved allegedly because the Management did not submit a proposal to the Education Officer for the

same. She therefore, approached this Court in Writ Petition No.6076 of 2004, which came to be disposed off on 25th October, 2004 by directing the Management to submit a proposal for approval to the Education Officer as per the information which had been called for vide his communication dated 26th August, 2003. The Education Officer was directed to consider the proposal for approval of the Petitioner's appointment as Primary Teacher on its own merits. Consequently, the Management had submitted its proposal to the Education Officer and vide the impugned order dated 11th January, 2005, the Education Officer has rejected the proposal on the ground that :-

a. Out of 21 teachers working in two schools of the Management i.e. Nav Maharashtra Shikshan Prasarak Mandal Sanchalit, only 3 teachers were required to be from Scheduled Caste but 9 such teachers have been appointed and therefore, the back log of Scheduled Tribes remained to be filled up.

b. There are 3 teachers, who are surplus in the first school and in the second school, one teacher is surplus. All these school teachers are paid their salary, as per the order of this Hon'ble Court but they are found to be surplus.

c. The service roster was not submitted by the Management.

d. That the 7th standard division was approved for the academic year 1999-2000 onwards as unaided, the Petitioner could not have been appointed since 1991.

3. It was submitted by Mr.Kudle, that the Petitioner has been working uninterruptedly from 1991 onwards i.e. for about 15 years and the mere fact

that she was allowed to take admission in the D.Ed. course, itself protected her service and she has a legal right to be a permanent teacher right from the initial date of her appointment. There were so many teachers, who were appointed after the Petitioner's initial appointment and their appointments have been approved. If there are surplus teachers, undoubtedly those teachers will have to be declared as surplus and the Petitioner's appointment is to be approved, as per Mr.Kudle. He has further relied on the Government Circular dated 29th June, 2002 and submitted that those untrained teachers, who were appointed prior to 5th November, 1997 have been protected and they cannot be removed by the Management. Mr.Kudle further alleged that the Respondent Management is hand in gloves with the Education Officer and consequently the Petitioner is the sufferer.

4. So far as the Circular dated 29th June, 2006 is concerned, the same is self speaking and it concludes with the direction that those untrained teachers who could not obtain D.Ed. qualification even until the year 2002, will have to be removed from the services forthwith. There is no dispute that the Petitioner has obtained D.Ed. qualification in March, 2003 and in fact under the said Circular she was not protected.

5. The Maharashtra Employees of Private Schools

Rules, 1981, framed under The Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 have prescribed the educational qualifications for the primary teachers, in Schedule-B and after the Rules have been brought into force, it is evident that training qualification like D.Ed., Teachers Diploma, Training Teachers Certificate, Training Master Certificate or Primary Teachers Certificate or STC are essential qualifications, over and above S.S.C. or matriculation. The rights of untrained teachers and seeking admissions to the postal D.Ed, are no more resintegrated in view of the judgment of this Court in the case of **Shailaja Ashokrao Walse Vs. State of Maharashtra & Ors., 1999(1) Mh.L.J. 291.** Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, casts certain obligations on the Management of Private

Schools and its relevant provisions read as under :-

Section 5 - Certain obligations of Management of private schools :-

1. The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy : [Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay. [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education,] whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event

of such person being available, the Management shall appoint that person in such vacancy].

2. Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

6. It is necessary that the vacant posts are to be filled in the manner prescribed by appointing such persons who have obtained the required qualifications. The appointment of such person shall also be made on probation. In the instant case, as noted earlier the Petitioner did not fulfil the requisite qualification prior to March, 2003 for being appointed as an Assistant Teacher in a Primary School. In addition the appointment order of the Petitioner was not placed before the Education Officer. Be that as it may, the fact remains that the Respondent Management is running an aided school and the teachers as well as the other staff are being paid their salary from the Government Treasury. As of now, there are four surplus teachers and the Maharashtra Employees of Private Schools Rules, 1981 makes it obligatory on the part of the Management to fill in the vacancies for the socially backward classes viz. the Scheduled Caste, Scheduled Tribe, Other Backward Class, Non Tribe and so on as per the quota fixed. A Writ of Mandamus can be issued in favour of the Petitioner only if she had demonstrated before us that her appointment was made in accordance with the requirements of the Maharashtra

Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Maharashtra Employees of Private Schools Rules, 1981 and against the existing vacancies, after she obtained the D.Ed. qualification in March, 2003. And such is not the case, and therefore, this Petition fails at the threshold.

7. The Petition is hereby rejected summarily.

However, we make it clear that if in the ensuing year there are vacancies in primary section i.e. upto 7th standard, in either of the schools run by Respondent No.2, the Petitioner's proposal for approval can be submitted to the Education Officer. We direct the Management to submit a fresh proposal in case there are vacancies in the primary section for D.Ed. teachers, so that the Petitioner's case can be considered against such available vacancies in open category atleast for the ensuing academic year or for the current academic year onwards, as the case be depending upon the available vacancies, if any.

8. In case, the Petitioner's salary has not been

paid in spite of the fact that she has worked in the past, it shall be the responsibility of the Management i.e. Respondent No.2. to clear the salary arrears at the earliest possible and in any case before 31st December, 2006.

(NARESH H.PATIL,J.)

(B.H.MARLAPALLE,J.)